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To protect first amendment rights of journalists and internet service providers by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called “Strategic Lawsuits Against Public Participation” or “SLAPPs”, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2012

Mr. KYL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect first amendment rights of journalists and internet service providers by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called “Strategic Lawsuits Against Public Participation” or “SLAPPs”, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Press Act of
5 2012”.

1 **SEC. 2. SPECIAL MOTION TO DISMISS.**

2 Part VI of title 28, United States Code, is amended
3 by adding at the end the following:

4 **“CHAPTER 182—SPECIAL MOTION TO**
5 **DISMISS**

“Sec.

“4201. Special motion to dismiss.

“4202. Stay of discovery.

“4203. Exceptions for governmental litigation and commercial speech.

“4204. Interlocutory appeal.

“4205. Special motion to quash.

“4206. Removal.

“4207. Fees, costs, and sanctions.

6 **“§ 4201. Special motion to dismiss**

7 “(a) IN GENERAL.—A representative of the news
8 media (as defined in section 552(a)(4) of title 5) may file
9 a special motion to dismiss any claim asserted against the
10 representative of the news media in a civil action if the
11 claim arises in whole or in part from an oral or written
12 statement or other expression that is on a matter of public
13 concern or that relates to a public official or figure.

14 “(b) TIME LIMIT.—Unless the court grants an exten-
15 sion, a special motion to dismiss under this section shall
16 be filed—

17 “(1) not later than 45 days after the date of
18 service of the claim, if the claim is filed in Federal
19 court; or

1 “(2) not later than 30 days after the date of re-
 2 moval, if the claim is removed to Federal court
 3 under section 4206.

4 “(c) AMENDMENTS.—If a special motion to dismiss
 5 is filed under this section as to a claim, the claim may
 6 not be amended or supplemented until a final and
 7 unappealable order is entered denying the special motion
 8 to dismiss.

9 “(d) BURDENS OF PROOF.—

10 “(1) MOVING PARTY.—A representative of the
 11 news media filing a special motion to dismiss under
 12 this section as to a claim shall have the burden of
 13 making a prima facie showing that the claim is a
 14 claim described in subsection (a).

15 “(2) NONMOVING PARTY.—If the movant meets
 16 the burden described in paragraph (1) for a claim,
 17 the party asserting the claim shall bear the burden
 18 of proving that the claim is—

19 “(A) legally sufficient; and

20 “(B) supported by a prima facie showing,
 21 based on admissible evidence, of facts sufficient
 22 to sustain a favorable judgment.

23 “(3) FAILURE TO MEET BURDEN.—If the non-
 24 moving party fails to meet the burden required for

1 a claim under paragraph (2), the claim shall be dis-
 2 missed with prejudice.

3 **“§ 4202. Stay of discovery**

4 “(a) IN GENERAL.—Except as provided in subsection
 5 (b), upon the filing of a special motion to dismiss under
 6 section 4201, discovery proceedings in the action shall be
 7 stayed until a final and unappealable order is entered on
 8 the special motion to dismiss.

9 “(b) LIMITATION AND EXCEPTION.—

10 “(1) LIMITATION.—A stay issued under sub-
 11 section (a) based on the filing of a special motion to
 12 dismiss that only seeks dismissal of a third-party
 13 claim or a cross claim asserted by a defendant shall
 14 only stay discovery that—

15 “(A) is requested by the party asserting
 16 the third-party claim or cross claim; or

17 “(B) relates solely to the third-party claim
 18 or cross claim.

19 “(2) EXCEPTION.—Upon motion and for good
 20 cause shown, a court may order that specified dis-
 21 covery be conducted.

22 **“§ 4203. Exceptions for governmental litigation and**
 23 **commercial speech**

24 “A special motion to dismiss under section 4201 may
 25 not be filed as to a claim that—

1 “(1) is brought by the Federal Government or
2 the attorney general of a State; or

3 “(2) arises out of a statement offering or pro-
4 moting the sale of the goods or services of the per-
5 son making the statement.

6 **“§ 4204. Interlocutory appeal**

7 “An aggrieved party may take an immediate inter-
8 locutory appeal from an order granting or denying in
9 whole or in part a special motion to dismiss under section
10 4201.

11 **“§ 4205. Special motion to quash**

12 “(a) IN GENERAL.—A person whose personally iden-
13 tifying information is sought in connection with a claim
14 that arises in whole or in part from an oral or written
15 statement or other expression that is on a matter of public
16 concern or that relates to a public official or figure, or
17 a person from whom such information is sought in connec-
18 tion with such a claim, may file a special motion to quash
19 the request or order to produce the information.

20 “(b) BURDENS OF PROOF.—

21 “(1) MOVING PARTY.—A person filing a special
22 motion to quash a request or order under this sec-
23 tion shall have the burden of making a prima facie
24 showing that the request or order is a request or
25 order described in subsection (a).

1 “(2) NONMOVING PARTY.—If the movant meets
 2 the burden described in paragraph (1), the party
 3 who made the request or sought the order shall bear
 4 the burden of showing that the claim described in
 5 subsection (a) is—

6 “(A) legally sufficient; and

7 “(B) supported by a prima facie showing,
 8 based on admissible evidence, of facts sufficient
 9 to sustain a favorable judgment.

10 “(3) FAILURE TO MEET BURDEN.—If the non-
 11 moving party fails to meet the burden required for
 12 a claim under paragraph (2), the request or order to
 13 produce the personally identifying information shall
 14 be quashed.

15 **“§ 4206. Removal**

16 “(a) SPECIAL MOTION TO DISMISS.—

17 “(1) IN GENERAL.—Except as provided in para-
 18 graph (2), a civil action in a State court that raises
 19 a claim that colorably appears to be a claim de-
 20 scribed in section 4201(a) may be removed to the
 21 district court of the United States for the district
 22 and division embracing the place where the civil ac-
 23 tion is pending by a party who may file and who
 24 seeks to file a special motion to dismiss under sec-

tion 4201 that asserts a colorable defense based on the Constitution or laws of the United States.

“(2) EXCEPTION.—Removal may not be requested under paragraph (1) on the basis of a third-party claim or a cross claim asserted by a defendant.

“(3) REMAND.—If a civil action is removed under paragraph (1), and a final and unappealable order is entered denying the special motion to dismiss filed under section 4201, the court may remand the remaining claims to the State court from which the civil action was removed.

“(b) SPECIAL MOTION TO QUASH.—

“(1) IN GENERAL.—A proceeding in a State court in which a request or order that colorably appears to be a request or order described in section 4205(a) is sought, issued, or sought to be enforced may be removed to the district court of the United States for the district and division embracing the place where the civil action is pending by a person who may file and who seeks to file a special motion to quash under section 4205 that asserts a colorable defense based on the Constitution or laws of the United States.

“(2) LIMITATION.—If removal is requested under paragraph (1) for a proceeding in which a re-

1 quest or order described in section 4205(a) is
 2 sought, issued, or sought to be enforced, and there
 3 is no basis for removal of the remainder of the civil
 4 action in connection with which the proceeding is
 5 brought, or no party has requested removal of the
 6 remainder of the civil action, only the proceeding in
 7 which the request or order described is section
 8 4205(a) is sought, issued, or sought to be enforced
 9 may be removed.

10 **“§ 4207. Fees, costs, and sanctions**

11 “(a) ATTORNEY’S FEES AND COSTS.—Except as pro-
 12 vided in subsection (c), a court shall award a person who
 13 files and prevails on a special motion to dismiss under sec-
 14 tion 4201 or a special motion to quash under section 4205
 15 litigation costs, expert witness fees, and reasonable attor-
 16 ney’s fees.

17 “(b) FRIVOLOUS MOTIONS OR PETITIONS.—Except
 18 as provided in subsection (c)(1), if a court finds that a
 19 special motion to dismiss under section 4201, a special
 20 motion to quash under section 4205, or a notice of re-
 21 moval under section 4206 is frivolous or is solely intended
 22 to cause unnecessary delay, the court may award litigation
 23 costs, expert witness fees, and reasonable attorney’s fees
 24 to the party that responded to the motion or notice.

25 “(c) EXCEPTIONS.—

1 “(1) GOVERNMENTAL ENTITIES.—The Federal
 2 Government and the government of a State, or polit-
 3 ical subdivision thereof, may not recover litigation
 4 costs, expert witness fees, or attorney’s fees under
 5 this section.

6 “(2) NOVEL LEGAL QUESTIONS.—A court may
 7 not award litigation costs, expert witness fees, or at-
 8 torney’s fees under subsection (a) if the grant of the
 9 special motion to dismiss under section 4201 or the
 10 special motion to quash under section 4205 de-
 11 pended on the resolution of a novel or unsettled legal
 12 question in favor of the movant.”.

13 **SEC. 3. RELATIONSHIP TO OTHER LAWS.**

14 Nothing in this Act or the amendments made by this
 15 Act shall preempt or supersede any Federal or State statu-
 16 tory, constitutional, case, or common law that provides the
 17 equivalent or greater protection for persons engaging in
 18 activities protected by the First Amendment to the Con-
 19 stitution of the United States.

20 **SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.**

21 (a) TABLE OF CHAPTERS.—The table of chapters for
 22 part VI of title 28, United States Code, is amended by
 23 adding at the end the following:

“182. Special motion to dismiss 4201”.

24 (b) INTERLOCUTORY APPEALS.—Section 1292(a) of
 25 title 28, United States Code, is amended—

1 (1) in paragraph (3), by striking the period at
2 the end and inserting “; and”; and

3 (2) by adding at the end the following:

4 “(4) Interlocutory orders granting or denying in
5 whole or in part special motions to dismiss under
6 section 4201.”.

7 (c) NONDISCHARGABILITY OF FEES AND COSTS.—
8 Section 523(a) of title 11, United States Code, is amend-
9 ed—

10 (1) in paragraph (18), by striking “or” at the
11 end;

12 (2) in paragraph (19), by striking the period at
13 the end and inserting “; or”; and

14 (3) by inserting after paragraph (19) the fol-
15 lowing:

16 “(20) for litigation costs, expert witness fees, or
17 reasonable attorney’s fees awarded by a court under
18 chapter 182 of title 28 or under comparable State
19 laws.”.

20 **SEC. 5. EFFECTIVE DATE; APPLICABILITY.**

21 (a) EFFECTIVE DATE.—Except as provided in sub-
22 section (b), this Act and the amendments made by this
23 Act shall—

24 (1) take effect on the date of enactment of this
25 Act; and

1 (2) apply to a claim filed on or after the date
2 of enactment of this Act.

3 (b) CLAIMS FILED BEFORE ENACTMENT.—For a
4 claim that was filed before and is pending on the date of
5 enactment of this Act—

6 (1) this Act and the amendments made by this
7 Act shall apply to the claim if the court with original
8 jurisdiction of the claim has not entered a judgment
9 on the merits as to the claim as of the date of enact-
10 ment of this Act; and

11 (2) for a claim described in paragraph (1), the
12 periods under sections 4201 and 1446 of title 28,
13 United States Code, as amended by this Act, shall
14 begin on the date of enactment of this Act.

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